

**93 / 2009**

**CONCERNING** An application for review pursuant to  
Section 193 of the Lawyers and  
Conveyancers Act 2006

**AND**

**CONCERNING** A determination of the Wellington  
Standards Committee 2

**BETWEEN** **BUCKINGHAM** of Upper Hutt

Applicant

**AND** **WYCOMBE** of Upper Hutt

Respondent

## **DECISION**

### **Background**

[1] This is a review of a decision of the Wellington Standards Committee 2 in respect of a complaint by Ms Buckingham against Ms. Wycombe. Ms Buckingham complained to New Zealand Law Society in respect of the conduct by Ms. Wycombe when she assisted Ms Buckingham in dealing with relationship property matters at the conclusion of a relationship.

[2] Ms Buckingham initially contacted the Law Society regarding what she saw as a degree of tardiness in a response she was seeking from Ms. Wycombe (or her firm) in respect of a complaint she had raised, and also in respect of the handing on of her files to new lawyers. On 27 March 2009 Ms Buckingham, being dissatisfied with the response from Ms. Wycombe or her firm asked that the matter be dealt with as a complaint. The matter was accordingly referred to the Standards Committee.

### **The Complaint**

[3] Ms Buckingham's complaint is fundamentally that Ms. Wycombe failed to provide the level of service that can properly be expected of a lawyer. She raised matters as to quality, timeliness, and the provision of information.

[4] The Standards Committee dismissed the complaint on the basis that Ms. Wycombe had responded to the matters raised adequately and there was no lapse in service that warranted action by the Committee. Ms Buckingham sought a review of that decision. The parties consented to this matter being considered without a formal hearing and therefore in accordance with s 206(2) of the Lawyers and Conveyancers Act this matter is being determined on the material made available to this office by the parties and the Standards Committee. On 22 July 2009 both were informed by this office that the matter would now proceed to and a decision would follow. Subsequent to that Ms Buckingham provided further material on 27 July 2009. I observe that it was provided after the inquiry in the matter was closed and I could properly decline to consider information that was provided after that time. In the event I have considered the information provided and it did not affect this decision. Should the respondent wish to have copies of the information for her records they will be provided on request.

### **Background**

[5] Ms Buckingham separated from her partner, Ms C. It appears that despite the circumstances there was a degree of amicability as the parties were communicating relatively effectively as regards what arrangements could be made and the general outline of an agreed property settlement was reached. This involved Ms Buckingham obtaining further finance, the parties entering into a relationship property agreement, and making some amendments to the trust (which owned the property in question). In light of the nature of this complaint it may be useful to set out something of a chronology of the communications in the matter. The information is drawn from the documents provided by the parties. I note that in light of this it may not be entirely complete but it is sufficient to have an overall appreciation of the manner and timelines of the relevant communications. All dates are 2009.

30 January	Ms Buckingham met with Ms. Wycombe for the first time.
3 February (12 06 PM)	Email Ms. Wycombe to Ms Buckingham regarding trust arrangements
3 February (12 51 PM)	Email Ms Buckingham to Ms. Wycombe indicating that Ms C is not an appointor of the trust and seeking advice on offer.
3 February (1 18 PM)	Email Ms. Wycombe to Ms Buckingham providing clarification and declining to provide advice on property offer.
3 February (1 18 PM)	Email Ms. Wycombe to Ms Buckingham
3 February (1 37 PM)	Email Ms Buckingham to Ms. Wycombe explaining manner

in which proposed settlement figure was reached

3 February (1 53 PM)	Email Ms. Wycombe to Ms Buckingham seeking further clarification of manner of calculation.
16 February (11 20 AM)	Email Ms Buckingham to Ms. Wycombe seeking progress report.
16 February (2 33 PM)	Email Ms. Wycombe to Ms Buckingham indicating progress.
16 February (3 50 PM)	Email Ms Buckingham to Ms. Wycombe indicating availability and updating on finance.
16 February (4 01 PM)	Email Ms. Wycombe to Ms Buckingham updating on progress
19 February (9 02 AM)	Email Ms Buckingham to Ms. Wycombe cancelling meeting
19 February (9 12 AM)	Email Ms. Wycombe to Ms Buckingham indicating progress and availability.
19 February (9 14 AM)	Email ms Buckingham to Ms. Wycombe acknowledging earlier email.
19 February (9 20 AM)	Email Ms. Wycombe to Ms Buckingham seeking clarification of whether trust will be purchaser of house.
4 March (3 44 PM)	Email Ms Buckingham to Ms. Wycombe indication "This suggestion is acceptable to me" (prior communication appears unavailable)
4 March (4 09 PM)	Email Ms. Wycombe to Ms Buckingham indicating amendment to agreement will be required
4 March (4 18 PM)	Email Ms Buckingham to Ms. Wycombe
4 March (5 06 PM)	Email Ms. Wycombe to Ms Buckingham indicating amended drafts will be forwarded.
9 March (8 14 AM)	Email Ms Buckingham to Ms. Wycombe querying draft nature of documents and indicating haste required.
9 March (10 25 AM)	Email from Ms Buckingham to Ms. Wycombe indicating assent to agreement
11 March (3 24 PM)	Further email Ms Buckingham to Ms. Wycombe complaining of delays.
11 March (3 26 PM)	Ms. Wycombe emails Ms Buckingham in response explaining delays and need for independent trustee.
11 March (3 30 PM)	Email Ms Buckingham to Ms. Wycombe indicating that Public Trust could remain trustee and that she cannot wait any longer.
11 March	Ms C telephoned Ms. Wycombe and left a voicemail message.

11 March (3 30 PM)	Ms. Wycombe emails Ms Buckingham noting telephone call and advice that Ms C is arranging for documents to be signed.
11 March (3 40 PM)	Email Ms. Wycombe to Ms Buckingham indicating other immediate commitments and need to change documents to reflect Public Trustee as Trustee.
13 March (2 40 PM)	Email Ms Buckingham to Ms. Wycombe terminating retainer and asking that documents be forwarded to new advisors.
16 March	Ms. Wycombe goes on leave (until 20 March)
17 March (2 18 PM)	Email Mr P to Ms Buckingham acknowledging email of 13 March.
19 March 2009	Letter Ms. Wycombe to Ms Buckingham responding to complaints and bill of costs enclosed (previously dictated).
20 March (11 08 AM)	Email Ms Buckingham to NZLS cc Mr P.
20 March (5 09 PM)	Email Mr P to Ms Buckingham relating to release of files.
22 March 2009 (9 41 AM)	Email ms Buckingham to Mr P regarding payment of fees and release of files.

[6] Ms Buckingham's complaints have a number of strands. I will not enumerate all of them; however, in general she is of the view that Ms. Wycombe was dilatory throughout and did not appreciate or respond to the need for urgency in this matter. She states that she expected the matter to be simple and quick given that the outline of the agreement with her former partner was agreed. She considers that the delays in drafting the agreement were inordinate in the circumstances. She also alleges that various communications were not responded to. She also states that her former partner was legally trained and also had legal assistance at relevant times and therefore any delay cannot be attributed to her lack of legal advice. She also found it objectionable that Ms. Wycombe took leave on 16 March without informing her of this.

[7] The relationship between the parties spanned 30 January to 13 March – a little over six weeks.

### **Applicable Standards**

[8] The Lawyers and Conveyancers Act 2006 requires in s 12 that lawyers provide services that meet a “standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer”. That obligation is further expanded on

in a number of the Rules of Conduct and Client Care for Lawyers. Relevant Rules provide:

3. In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.

3.1...

3.2 A lawyer must respond to inquiries from the client in a timely manner.

3.3 A lawyer must inform the client if there are any material and unexpected delays in a matter.

7.1 A lawyer must take reasonable steps to ensure that a client understands the nature of the retainer and must keep the client informed about progress on the retainer. A lawyer must also consult the client (not being another lawyer acting in a professional capacity) about the steps to be taken to implement the client's instructions.

7.2 A lawyer must promptly answer requests for information or other inquiries from the client.

### **Consideration**

[9] It is clear that Ms Buckingham is not happy with the level of service she received. However it is important to note that the Rules of Conduct and Client Care impose minimum standards on lawyers. I have reviewed the correspondence on this file and the statements by Ms Buckingham, Ms. Wycombe and Mr P. I also note that I have approached the question of Ms. Wycombe's conduct on a global basis. As such I have looked to the overall course of conduct, diligence, and timeliness of Ms. Wycombe rather than taking each piece of correspondence and its response in isolation.

[10] There are aspects of Ms. Wycombe's conduct which could have been improved. It might be observed that given the apparent urgency of the work it could have been completed more quickly, or that clear information as to how long things might take or what matters might cause delays could have been communicated. In this sense Mr P was correct to concede that there had been some delays. Ms Buckingham also complains that Ms. Wycombe did not respond to her in a timely manner. From the emails on the files it is apparent that there were some occasions when matters were responded to more or less instantaneously. On other occasions there were some

delays. However as can be seen from the chronology there was a relatively steady flow of communication between the parties. I do not consider that Ms. Wycombe failed in not responding in a timely way to inquiries. In this regard the conduct of Ms. Wycombe was perhaps not exemplary. However in all of the circumstances I do not consider that the delays in this matter were of a nature to fall foul of the professional duty of Ms. Wycombe to act competently and diligently. The file (and the chronology above) shows that Ms. Wycombe was progressing things with an acceptable degree of diligence in the circumstances.

[11] While the work was not undertaken with the utmost urgency there was a proper need to ensure it was completed properly and at times reviewed by a supervising lawyer. It was proper for Ms. Wycombe to clarify with Ms Buckingham how the arrangement was reached and to exercise some caution. In some instances Ms Buckingham appeared to require matters to move at a pace that was faster than was reasonably possible in the circumstances. I note that where a relationship property agreement is found to cause serious injustice it may be set aside by the court notwithstanding the informed consent of the parties. As such a lawyer must ensure that the agreement is would withstand scrutiny on this ground. In doing this Ms. Wycombe was protecting Ms Buckingham's interests. It is not accurate to suggest that this amounted to Ms. Wycombe being more interested in Ms C's interests than Ms Buckingham's. There is no reason to doubt that Ms Buckingham was correct in stating that at relevant times Ms C was legally advised. However the wider point appears to be that at some stages Ms C needed to consider (or take advice on) the arrangements proposed. This is not inconsistent with Ms. Wycombe's statement that she was not instructed to liase with any legal advisor acting on behalf of Ms C (which may have led to more timely responses).

[12] The fact that there was a typographical error in the document is of minor importance. While it is a clear slip it was easily corrected and it is to detect and rectify such slips that documents are sent for review to clients and also reviewed by peers. It was also acknowledged by the respondent and apologised for. In all of the circumstances an error of this nature is not one in respect of which a response by the Standards Committee was needed.

[13] Given that I consider that Ms. Wycombe has not breached her professional duty of competence and diligence it follows that I do not consider that Ms Buckingham was

required to pay more in her relationship property settlement by virtue of a failure of Ms. Wycombe.

[14] As regards the complaint that the file in this matter was retained until fees had been paid, there is nothing objectionable about this. It was part of the terms of the retainer to which Ms Buckingham agreed and is also a common-law right of lawyers (and other professionals and trades-people) to retain work-product until payment of a fee is made. While in some circumstances lawyers will release files without payment of their fee they are entitled to retain the file under the lien for costs where it properly exists. It cannot be unprofessional to do so. In this case it appears that the file was released without payment of the fee after a period of delay. In this it appears Ms Wycombe's firm did not stand on their strict legal rights.

[15] Ms Buckingham also complained that she requested advice regarding the "safety" of mortgage documents. In a letter to the Law Society she says that those documents (dated 10 February 2009) were sent to the Ms. Wycombe on 19 February at 8 55 AM. I did not see a copy of that email. Reference was however made to the existence of an offer of finance to Ms Buckingham in an email from her to Ms. Wycombe of 16 February, though no particular advice was sought at that time. Although in its body it asks "please advise state of documents" I take this to mean the state of the relationship property documents and not the loan documents (which did not appear to be attached to that email in any event). I note also that on 19 February there were at least four other communications between Ms Buckingham and Ms. Wycombe, which did not refer to any finance documents. Even assuming that the email of 8 55 AM was sent and not specifically responded to I do not consider that this failure alone is sufficiently serious to warrant further action to have been taken by the Standards Committee.

[16] Ms Buckingham also raised the issue of Ms. Wycombe taking leave without informing her. Where a lawyer takes leave and this is likely to cause significant delays then the lawyer should inform the client of the likely delays. This obligation can be drawn from r 3.3 which provides that "a lawyer must inform the client if there are any material and unexpected delays in a matter". The leave was planned for the week beginning 16 March 2009. It is not clear what particular delays would have been caused by that leave or what arrangements were made or would have been made for another lawyer in the firm to attend to matters. In the event Ms Buckingham terminated the retainer on 13 March 2009. It appears that learning that Ms. Wycombe was to take

leave contributed to this decision, along with wider dissatisfaction with the level of service provided. While it may have been better for the relationship between Ms Buckingham and Ms. Wycombe if Ms. Wycombe had informed Ms Buckingham herself of her intended leave the failure to do so was not causative of any delay and not a professional breach.

[17] I have reached this conclusion independently of the findings of the Standards Committee. However I also observe that the Standards Committee was comprised of Ms. Wycombe's professional peers and was informed by lay membership. It would therefore be with great caution that I would have departed from the Committee's opinion about what conduct was unacceptable or unsatisfactory and in breach in the standard of care and diligence which could be reasonably expected from her. In this case I conclude the Standards Committee was correct in finding that conduct of Ms. Wycombe did not amount to a professional breach.

### **Result**

[18] The application for review is declined pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act. The decision of the Wellington Standards Committee 1 is confirmed.

**DATED** this 31<sup>st</sup> day of July 2009

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Duncan Webb

### **Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act this decision is to be provided to:

- Ms Buckingham as applicant
- Ms. Wycombe as respondent
- P & R as a related party
- The Wellington Standards Committee 1
- The New Zealand Law Society